

**AN ORDINANCE (1) AMENDING AND SUPPLEMENTING CHAPTER 345 (ZONING) OF THE
MUNICIPAL CODE TO ADD ARTICLE IX (INCLUSIONARY ZONING) REQUIRING THE INCLUSION OF
AFFORDABLE HOUSING UNITS IN ALL DEVELOPMENT PROJECTS WITH RESIDENTIAL WHICH
HAVE RECEIVED USE VARIANCES OR INCREASED DENSITY OR HEIGHT**

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, a purpose of the MLUL, at N.J.S.A. 40:55D-2.a, is to encourage municipal action to guide the appropriate use or development of all lands in this state in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, a purpose of the MLUL, at N.J.S.A. 40:55D-2.e, is to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; and

WHEREAS, the City of Jersey City has adopted a Housing Element, as per NJSA 52:27D-311, the “municipality may provide for its fair share and low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share”; and

WHEREAS, the Municipal Council of the City of Jersey City wishes to ensure that as the City grows and attracts market-rate residential development that it also provides opportunity for the City to meet its resident's, current and future, affordable housing needs; and

WHEREAS, an inclusionary ordinance with incentives and requiring a mandatory set-aside of affordable housing on-site is an effective and fair means of encouraging and ensuring the production of affordable housing by private sector developers recognized by the Supreme Court in So. Burlington Cty. N.A.A.C.P. v, Mt. Laurel Tp., 92 N.J. 158 (“Mt. Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

WHEREAS, nearly 40% of Jersey City's households are cost-burdened, defined by HUD as paying more than 30% of one's income towards housing, combined with housing values increasing at a much faster rate than income creates difficulties for families paying for other necessities such as food, clothing, transportation and medical care; and

WHEREAS, according the American Community Survey, the population in Jersey City from 2010 to 2017 increased by 7%, or an additional 18,335 residents; and

WHEREAS, the percentage change from 2010 to 2016 for residents who are below poverty level increased by 19%. In that same time frame, the population 65 and over who are below poverty level increased by 32%, and the population under 18 years old determined to be below poverty level increased by 13%; and

WHEREAS, according to the 2016 American Community Survey 45% of renters in Jersey City used more than 30% of their household income to pay rent, that represents a 15% increase from 2010; and

WHEREAS, according to the 2016 American Community Survey, 32% of all homeowners without a mortgage were paying more than 30% of their monthly income on housing; and

WHEREAS, increases in permitted residential density or floor area ratio ("FAR"), accompanied by a mandatory set-aside of affordable housing, constitute incentives to private developers and compensatory benefits as required by the Fair Housing Act, N.J.S.A. 52:27D-311.h.; and

WHEREAS, amended redevelopment plans prepared and adopted under the Local Housing and Redevelopment Plan, N.J.S.A. 40A:12A-1 et seq., that increase residential density or FAR or permit residential uses in zoning districts restricted against such uses shall require a mandatory set-aside of affordable housing constitute a compensatory benefit for inclusionary development.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City, that Chapter 345 (Zoning) of the Municipal Code be amended to read as follows:

ARTICLE 345 ZONING

Article I through Article VIII

NO CHANGE.

Article IX Inclusionary Zoning

§ 345-78. - Purpose.

The purpose of this ordinance is to create mixed-income housing through new construction to assist the City in promoting the creation of Inclusionary Developments and Affordable Housing as the City grows and attracts new market-rate residential development.

§ 345-79. – Definitions for Inclusionary Zoning

The following terms, when used in this Article, shall have the following definitions:

AFFORDABLE HOUSING - means residential housing, which is restricted for occupancy by households whose combined annual income for all members does not exceed 120 percent of the median income. This term shall refer to the broad classification, and not be confused with more specific terms that define different income divisions.

“HUD” – means the United States Department of Housing and Urban Development

INCLUSIONARY DEVELOPMENT means a development containing both affordable and market rate units.

LOW-INCOME HOUSEHOLD means a household in which the combined total annual income for all members of a household, that does not exceed 50 percent of the average median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

LOW-INCOME UNIT means a restricted unit that is affordable to a low-income household.

MARKET-RATE UNITS mean housing not restricted to low-, moderate-income and workforce households that may sell or rent at any price.

MEDIAN INCOME means the median income by household size for Hudson county, as adopted by HUD income requirements by ordinance by the City Council.

Moderate-income Household means a household in which the combined total annual income for all members of a household is not less than 50 percent and does not exceed 80 percent of the median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

Moderate-income Unit means a restricted unit that is affordable to a moderate-income household.

REDEVELOPMENT PLAN means a plan adopted by the governing body of the City of Jersey City for the redevelopment or rehabilitation of all or any part of a redevelopment area, or area in need of rehabilitation, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq.

RESIDENTIAL means any real property and the improvements, buildings, structures or house thereon, whether single or multi-family, whether or not owner occupied, used for residential purposes.

RESTRICTED UNIT means a dwelling unit, whether a rental unit or ownership unit, that is subject to affordability controls.

VERY LOW-INCOME HOUSEHOLD means a household in which the combined total annual income for all members of a household does not exceed 30 percent of the median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

VERY LOW INCOME UNIT means a restricted unit that is affordable to a very low- income household.

WORKFORCE HOUSEHOLD means a household in which the combined total annual income for all members of a household is not less than 80 percent and does not exceed 120 percent of the median income. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year

WORKFORCE UNIT means a restricted unit that is affordable to a workforce-income household.

§ 345-80. - Mandatory Set-Aside.

A. Applicability

1. After the effective date of this Article, compliance with this Article is required for all properties/developments with a residential component that are requesting an additional 5 units or 5,000 square feet of additional residential floor area, whichever is less, beyond the permitted existing zoning through a variance pursuant to NJS 40:55D-70.c., NJS 40:55D-70.d or a Redevelopment Plan Amendment.

B. Exemptions

1. Developments of 30 units or less.
2. Any project which is to be undertaken by the Jersey City Housing Authority.
3. Rezoning initiated by the City as a result of a Master Plan Update or Amendment

C. Inclusionary Housing Set-Aside

1. Applicable developments shall set aside not less than twenty percent (20%) of the total number (permitted plus additional) of residential units, as identified in Section A. herein, as affordable housing. This requirement shall apply to both rental units and all forms of ownership. All affordable units shall be consistent with Chapter 188 of the Jersey City Code.
2. The 20% set aside shall be provided on-site in accordance with the following:
 - i) No less than 5% shall be low-income units
 - ii) No less than 5% shall be moderate-income units
 - iii) No more than 10% be workforce housing units
 - iv) No more than 35% shall be studio and 1-bedroom units
 - v) All inclusionary units shall be required to be income restricted for a minimum of 30 years
3. Rounding. When any calculation of the mandatory set aside results in a fractional income-restricted unit, the fraction shall be rounded up to the next whole unit.

D. Approving Authority

All Inclusionary Zoning applications shall be reviewed and approved by the Director of the Office of Affordable Housing, the Director of Housing, Economic Development and Commerce (HEDC), or their designee, and the Director of Community Development. In the instance the application

is in a Redevelopment Plan area, the Jersey City Redevelopment Agency shall also be one of the bodies who review and approve Inclusionary Zoning Applications.

- E. The required Affordable Housing units shall be constructed on-site and integrated with the market rate units unless granted relief by the approving authority.
- F. All Inclusionary Zoning applications will be formalized with an Affordable Housing Agreement, as required in Chapter 188 of the Jersey City Code. The Affordable Housing Agreement shall be a requirement to be included in any Planning or Zoning Board application that triggers the Inclusionary Housing Mandatory Set-Aside.

§ 345-81. – Off-site Affordable Units in Lieu of On-Site Affordable Units

The approving authority may permit the creation of off-site affordable units for some or all the obligation in accordance with the following:

- i) The developer/applicant shall pay \$5,000 to the City of Jersey City to cover the administrative fees required for the fiscal analysis study to determine how the proposed off-site affordable housing units compares in value to the required on-site affordable housing units.
- ii) Off-site affordable housing units are within the same Ward as the development.
- iii) The off-site location is available, approvable, developable, and will NOT require a variance for density, F.A.R., or height.
- iv) The specific location for the off-site units is provided at the time of request for such approval.
- v) Off-site units shall be developed either prior to or simultaneously with on-site market rate units.
- vi) The off-site affordable units shall meet all applicable requirements of the Jersey City Code Chapter 188.

§ 345-82. - Payment In Lieu of Creating Affordable Housing Units

- A. At the discretion of the approving authority, a developer may provide a payment in lieu of constructing the affordable housing obligation into the City of Jersey City's Affordable Housing Trust Fund. The opportunity to provide a payment in lieu of constructing on-site affordable housing units is not intended to be and should not be construed as a right available to developers at their sole option. The policy of this Article favors construction of on-site affordable units.
- B. The developer/applicant shall pay \$5,000 to the City of Jersey City to cover the administrative fees required for a fiscal analysis study to determine whether the proposal can absorb the on-site affordable requirement through the potential gain in land value resulting from increased units.
- C. The applicant shall demonstrate to the approving authority that the development of on-site affordable units is not feasible or not needed. The approving authority should consider the following metrics when determining if an application should be allowed to use the payment in lieu option. This list is not exhaustive; the approving authority can take into consideration any other relevant factors when making a determination.
 - 1. The site is in a designated Opportunity Zone.
 - 2. The site is more than a 1-mile radius outside of any existing or proposed light rail, PATH station, or Bus Rapid Transit stops.
 - 3. The site is in a census tract that already has a majority of units (50% or more) available where the median income of a family with 4 individuals can afford to live without paying more than 30% of their monthly income on housing costs.
 - 4. The amount of on-site units the developer proposes that are designated for households at or below 30% of the area median income for a minimum of 20 years. For example, if the project proposes only 10% on-site but all or most of those units are reserved for households at 30% AMI or lower; it should be looked at more favorably to allow the remaining 10% set aside to be a payment in lieu.
 - 5. In no instance shall the on-site affordable units be less than 5% of the total development.
- D. The amount of the payment-in-lieu figure shall be based upon a tiered payment-in-lieu system that shall increase 2% every year from the year this ordinance was adopted. The boundaries of the tiered areas shall be established on the map entitled "INCLUSIONARY ZONING: Payment in

Lieu of Creating Affordable Housing.” The Division shall update this map annually to properly represent current housing characteristics. The map shall be on file and available for public inspection with the Division of Affordable Housing. There shall be no instance where the payment in lieu is any less than what is listed within the below requirements (including any annual increases):

1. Tier 1 shall pay \$25,000 a unit
2. Tier 2 shall pay \$35,000 a unit
3. Tier 3 shall pay \$50,000 a unit
4. Tier 4 shall pay \$75,000 a unit
5. Tier 5 shall pay \$100,000 a unit

E. The approval of any payment in lieu benefit shall be conditioned upon the developer and the City entering into a developer’s agreement that details the manner in which the contribution will be fulfilled. That developer’s agreement shall also be made a part of the Required Affordable Housing Agreement, required in 345-84 Compliance.

§ 345-83. – Community Benefits in lieu of Creating Affordable Housing Units

- A. A reduction in the mandatory on-site Affordable Housing requirement may be considered relative to the value of community benefits proposed by the developer.
 - a. The developer/applicant shall pay \$5,000 to the City of Jersey City to cover the administrative fees required for the fiscal analysis study to determine the value of the proposed community benefit in comparison to the gain in land value resulting from the zone change.
 - b. The City of Jersey City shall only accept community benefits in the case of a redevelopment plan amendment and acceptance of said community benefit shall be at the discretion of the Mayor or their designee, the Jersey City Redevelopment Agency, and the City Council.
 - c. Eligible community benefits may consist of, but are not limited to, the following: construction of a public facility, such as, but not limited to, public schools, public recreational facilities, government offices, fire stations, police stations, public parking garages, public transportation systems or facilities, roads and water infrastructure, etc.
- B. The approval of any community benefit shall be conditioned upon the developer and the City entering into a redevelopment agreement that details the manner in which the contribution will

be fulfilled. That redevelopment agreement shall also be made a part of the Required Affordable Housing Agreement, required in 345-84 Compliance.

§ 345-84. - Compliance

- A. Inclusionary housing units and developments containing one or more affordable housing unit(s) shall meet all applicable requirements of the Jersey City Code Chapter 188.
- B. Developers shall submit an Affordable Housing Agreement outlined within Chapter 188 of the Jersey City Code to the satisfaction of the Office of Affordable Housing Compliance.
- C. Developers shall be required to comply with the "Duties of the Developer" as outlined in Chapter 188 of the Jersey City Code to the satisfaction of the Office of Affordable Housing Compliance.
- D. Developers shall comply with eligibility determination procedures by providing adequate documentation as set forth within Chapter 188 to the satisfaction of the Office of Affordable Housing Compliance.
- E. The Office of Housing Compliance shall be responsible for monitoring compliance and recordkeeping for all Affordable Housing Agreements produced as a result of this Article.

§ 345-85. – Violation, default and remedies

Upon a violation of any of the provisions of the affordable housing agreement, the Director of Affordable Housing shall give written notice to the developer specifying the nature of the violation and require corrective action within a reasonable period of time as set forth in Chapter 188. If the developer does not reply or correct the violation within the time specified, the developer shall, for each and every violation, be fined up to a maximum of \$2,000 a day that such violation continues after such notice.

§ 345-86. - Severability.

If any Section, Subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

INCLUSIONARY AFFORDABLE HOUSING ORDINANCE

Sponsored by _____

Seconded by _____

AN ORDINANCE REQUIRING THE INCLUSION OF AFFORDABLE HOUSING UNITS IN RESIDENTIAL AND MIXED USE DEVELOPMENTS, EITHER NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION, THAT SEEK OR RECEIVE INCENTIVES AND COMPENSATORY BENEFITS INCLUDING USE VARIANCES AND INCREASES IN DENSITY AND FLOOR AREA RATIO, AND IN REDEVELOPMENT PLANS PROVIDING FOR RESIDENTIAL DEVELOPMENT, PROVIDING STANDARDS FOR DESIGN AND CONSTRUCTION OF AFFORDABLE HOUSING, AND ESTABLISHING REQUIREMENTS FOR AFFIRMATIVE MARKETING, SALE, RENTAL, AND AFFORDABILITY CONTROLS FOR AFFORDABLE HOUSING.

WHEREAS, the City of Jersey City seeks to maintain and provide diversity and choice in the mix of housing types available in the City; and

WHEREAS, an inclusionary ordinance with incentives and requiring a mandatory set-aside of affordable housing on-site is an effective and fair means of encouraging and ensuring the production of affordable housing by private sector developers recognized by the Supreme Court in So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 (“Mt. Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

WHEREAS, increases in permitted residential density or floor area ratio (“FAR”), accompanied by a mandatory set-aside of affordable housing, constitute incentives to private developers and compensatory benefits as required by the Fair Housing Act, N.J.S.A. 52:27D-311.h.; and

WHEREAS, use variances granted by the Zoning Board of Adjustment permitting residential uses in zoning districts and redevelopment plans restricted against such uses constitute a compensatory benefit when a mandatory set-aside of affordable housing is required as a condition of such residential use variance approvals; and

WHEREAS, new and amended redevelopment plans prepared and adopted under the Local Housing and Redevelopment Plan, N.J.S.A. 40A.12A-1 et seq., that increase residential density or FAR or permit residential uses in zoning districts restricted against such uses and require a mandatory set-aside of affordable housing constitute a compensatory benefit for inclusionary development.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Jersey City, New Jersey, as follows:

Section 1. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, as defined and with the responsibilities specified at N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable development" means a housing development all or a portion of which consists of restricted units.

"Affordable housing" means housing restricted to income-eligible low and moderate income households.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share housing obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Assisted living residence" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Board of jurisdiction” means the Planning Board of the City of Jersey City, the Board of Adjustment of the City of Jersey City, or the City Council of the City of Jersey City, as applicable.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), or successor agency.

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Housing region” means a geographic area, determined by COAH, of no less than two and no more than four contiguous, whole counties, which exhibits significant social, economic, and income similarities and which constitutes, to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Infill” means development on vacant or underutilized property between existing buildings.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income for the housing region.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH or in accordance with COAH rules as adopted by ordinance by the City Council.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income for the housing region.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary and the transfer of ownership by court order.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Redevelopment plan” means a plan adopted by the governing body of the City of Jersey City for the redevelopment or rehabilitation of all or any part of a redevelopment area, or area in need of rehabilitation, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq.

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH’s adopted Regional Income Limits published annually by COAH or in accordance with COAH rules as adopted by ordinance by the City Council.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under the UHORP or MONI programs of the Agency.

“Substantial rehabilitation” means any rehabilitation of a vacant structure or any rehabilitation that involves the replacement of two or more major systems.

“Total development cost” mean the expenses that a developer can reasonably expect to incur in order to develop an affordable housing development, include “hard costs” such as land acquisition, site improvements, and new construction or rehabilitation, and “soft costs” consisting of all other costs and fees, such as professional services and financing fees.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

Section 2. Inclusionary Affordable Housing Requirements

- (a) **Applicability – Types of Development:** All development of property in the City of Jersey City that includes residential uses, whether residential or mixed use development, new construction on vacant land, redevelopment of previously developed sites, or substantial rehabilitation or adaptive use of existing structures, with the exception of the exemptions listed below in (c), shall include housing affordable to low and moderate income housing as specified below and in accordance with the standards of this Article.
- (b) **Applicability – Board of Jurisdiction:** The provisions of this Article shall be applicable to:
 1. Planning Board decisions on subdivision, site plan, and conditional use applications in zoning districts and adopted redevelopment plans upzoned to permit a higher density or floor area ratio or rezoned to allow residential uses after the effective date of this ordinance,
 2. Zoning Board of Adjustment decisions on applications for variances to permit residential uses in a zoning district or redevelopment plan restricted against such use or increases in density or floor area ratio (FAR), i.e., “d” variances, and
 3. The residential development provisions of new and amended redevelopment plans, which permit increased residential density or FAR or allow residential uses in redevelopment areas where such uses were previously not permitted, recommended by the Planning Board and adopted by the City Council under the Local Redevelopment and Housing Law after the effective date of this ordinance.
- (c) **Exemptions:** The following types of residential development are exempt from the provisions of this Article:
 1. The first ten (10) housing units of substantial rehabilitation projects.
 2. Development under an adopted redevelopment plan subject to an executed redevelopment agreement between the City of Jersey City and a redeveloper in effect as of the effective date of this ordinance, unless amended subsequently, or unless the development has entered in an payment in lieu of taxes agreement with the City.
- (d) **Set-Aside of Affordable Housing Required** – Each development and redevelopment plan subject to this Article shall set-aside and contain affordable housing as follows:
 1. 20 percent of the total units developed in a residential or mixed use development where the units are rented.
 2. 20 percent of the total units developed in a residential or mixed use development where the units are sold in fee simple, as a condominium, or as a cooperative.

3. In all calculations of a developer's affordable housing set-aside responsibility under this Article, any unit reserved for the superintendent of the residential development shall not be credited towards satisfaction of the affordable housing obligation.
4. Rounding: When any calculation of the percentage of affordable units required to be provided results in a fractional unit of one-half or more, the fraction shall be rounded up to the next whole unit. When a calculation results in a fraction of less than one-half, the fraction shall be rounded down to the previous whole unit.
5. Any residential or mixed use development receiving Urban Hub Tax Credit financing pursuant to N.J.S.A. 34:1B-207 et seq. shall set-aside 20 percent of the total units in the development as affordable units.

(e) **Phasing.** Construction and completion of affordable housing required under this Article shall take place simultaneously with the development of the market-rate units that trigger the affordable housing set-aside obligation, in accordance with the following construction and completion phasing schedule:

Maximum Percentage of Market-Rate Units Completed and Certificates of Occupancy Issued	Minimum Percentage of Low- and Moderate-Income Units Completed and Certificates of Occupancy Issued
25%	0
25%+1	10%
50%	50%
75%	75%
90%	100%

(f) **Location of Low and Moderate Income Units.** In inclusionary developments, low- and moderate-income units shall be integrated with and interspersed among the market-rate units, but may be concentrated for financing or property management reasons at the discretion of the board of jurisdiction, e.g., for rental affordable units satisfying the set-aside required for a development of market-rate condominium units.

(g) **Utilities.** Affordable units shall utilize the same type of heating source as market-rate units within the affordable development.

Section 3. New Construction and Substantial Rehabilitation Standards

The following standards apply to all newly constructed developments and substantial rehabilitations that contain low-and moderate-income housing units.

(a) **Low/Moderate Split of Affordable Housing Units:**

1. The designated affordable housing units shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.

(b) **Bedroom Distribution of Affordable Housing Units:**

1. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
2. In affordable developments that are not age-restricted the bedroom distributions of affordable units shall be structured, in conjunction with realistic market demands, such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
3. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(c) Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel on the first floor;
 - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
 - v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the City of Jersey City has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - A. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

- B. To this end, the builder of restricted units shall deposit funds within the City of Jersey City's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
- C. The funds deposited under paragraph B. above shall be used by the City of Jersey City for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the City of Jersey City.
- E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the City of Jersey City's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- F. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is impracticable to meet these requirements for site-specific reasons. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(d) Rents and Sales Prices for Affordable Units

- 1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits required by this ordinance.
- 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- 3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
- 4. At least 10 percent of all low- and moderate-income rental units in an affordable development shall be affordable to households earning no more than 30 percent of median income (i.e., very low income).
- 5. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability

average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

6. Occupancy standards for determining rents and sales prices: In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
 - iii. A two-bedroom unit shall be affordable to a three-person household;
 - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - v. A four-bedroom unit shall be affordable to a six-person household.
7. Occupancy standards for determining rents in assisted living facilities: In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
8. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the current Federal Reserve H.15 rate of interest for conventional mortgages), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented, i.e., the occupancy standards above; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented, i.e., the occupancy standards above; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
10. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

11. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
12. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Section 4. Affirmative Marketing Requirements

- (a) The City of Jersey City shall adopt by resolution an Affirmative Marketing Plan that complies with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 (Northeast: Bergen, Passaic, Hudson, and Sussex Counties, as may be amended) and covers the period of deed restriction.
- (d) The Administrative Agent designated by the City of Jersey City shall assure the affirmative marketing of all affordable units developed pursuant to this Article, consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative Marketing Plan, the Administrative Agent shall provide a list of housing counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy of the units.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the City of Jersey City.

Section 5. Occupancy Standards

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 1. Provide an occupant for each bedroom;
 2. Provide children of different sex with separate bedrooms; and

3. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the city of Jersey City's Operating Manual for affordable housing.

Section 6. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Article until the City of Jersey City elects to release the unit from such requirements. Prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et seq. and this Article, as may be amended and supplemented, for 99 years, provided that the 99-year period shall restart following the sale or transfer of a restricted ownership unit.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Article, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) All conveyances of restricted ownership units pursuant to this Article shall be made by deeds and restrictive covenants substantially in the form prescribed in N.J.A.C. 5:80-26 Appendices. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be filed by the developer or seller with the records office of the County of Hudson. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (g) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 7. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

Section 8. Buyer Income Eligibility

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

Section 9. Limitations on indebtedness secured by ownership unit; subordination

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

Section 10. Control Periods for Restricted Rental Units

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the City of Jersey City elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et seq. and this Article, as may be amended and supplemented, for 99 years, provided that the 99-year period shall restart following the sale or transfer of the property containing the rental units.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language substantially in the form set forth in N.J.A.C. 5:80-26 Appendices. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Hudson. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 1. Sublease or assignment of the lease of the unit;
 2. Sale or other voluntary transfer of the ownership of the unit; or
 3. The entry and enforcement of any judgment of foreclosure.

Section 11. Price Restrictions for Rental Units; Leases

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Section 12. Tenant Income Eligibility

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.

3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.

(b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
3. The household is currently in substandard or overcrowded living conditions;
4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

(c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 13. Administration: Municipal Housing Liaison and Administrative Agent

(a) The position of Municipal Housing Liaison (MHL) for the City of Jersey City is established by this Article. The City of Jersey City shall make the actual appointment of the MHL by resolution.

1. The MHL must be either a full-time or part-time employee of the City of Jersey City.
2. The person appointed as the MHL must be reported to DCA and to COAH or to any successor to that agency.
3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the City of Jersey City, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

- ii. The implementation of the Affirmative Marketing Plan and affordability controls.
- iii. When applicable, supervising any contracting Administrative Agent.
- iv. Monitoring the status of all restricted units in the City of Jersey City's Fair Share Plan;
- v. Compiling, verifying and submitting annual reports as required by COAH rules;
- vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
- vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by DCA or COAH.

(b) The City of Jersey City shall designate by resolution of the City Council one or more Administrative Agents to administer newly constructed or substantially rehabilitated affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC (N.J.A.C. 5:80-26).

(c) An Operating Manual shall be prepared and provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The Operating Manual(s) shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

(d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:

1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by DCA or COAH;
2. Affirmative Marketing;
3. Household Certification;
4. Affordability Controls;
5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners; and
8. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section 14. Enforcement of Affordable Housing Regulations

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - i. A fine of not more than \$1000 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the City of Jersey City Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and

expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 20. Appeals from Administrative Agent Decisions

Appeals from all decisions of an Administrative Agent designated pursuant to this Article shall be filed in writing with the Director of the Division of Community Development.

Section 21. Inclusionary Standards and Requirements for Future Redevelopment Plans

All redevelopment plans providing for residential development, prepared and adopted or amended pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. after the effective date of this Article, shall include inclusionary affordable housing development standards and requirements identical to the standards and requirements of this Article.

Section 22. Effective Date

This ordinance shall take effect upon passage and publication as provided by law.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.